



Date: April 21, 2015

To: Thomas J. Bonfield, City Manager
Through: W. Bowman Ferguson, Deputy City Manager
From: Marvin G. Williams, Director of Public Works

Subject: City Code Revision Regarding Re-Sale of Water and Sewer

Executive Summary

Under City Code Chapter 70, Article I, Section 70-25, the general rule is that City water and sewer customers are not permitted to re-sell (submeter) City water or sewer service. This code section includes an exception for “apartment structures” and also includes conditions under which apartment structures are allowed to submeter. In 1998 when a proposed revision was first brought to Council to allow for submetering in apartment complexes, the intent was that these complexes would consist of fifteen (15) or more apartment units, in alignment with what the NC Utilities Commission (“NCUC”) allows in regards to re-selling of services. However, when this ordinance change was first enacted the language failed to clearly define what is considered an apartment structure in the City of Durham. This has caused some confusion with various customers inquiring about the possibility of submetering both commercial and residential space. While it is clear that commercial space is not included in the code and may not be submetered, it remains somewhat ambiguous as to the residential portion of the ordinance. The proposed language change in the attached code revision defines a residential apartment complex as “premises not separated by property owned by others where one or more buildings under common ownership comprising fifteen (15) or more apartments are available for rent by residential tenants”. This definition clarification aligns the City’s definition of a residential apartment complex with the definition provided in NCUC Rule R18-2(e). This will assure that any submetering that occurs within the City of Durham will require compliance with the certification and regulatory requirements of the NCUC, which are designed in part to protect the interests of tenants.

Recommendation

The Public Works Department recommends that the City Council adopt an ordinance amending the Durham City Code, Chapter 70, Article I, Section 70-25 to further define the term “residential apartment complex” in the context of the resale of water and/or sewer services purchased from the City.

Background

For many years now the City of Durham has had a process for allowing the resale of water and sewer (submetering), with the intent to comply with State regulations with regard to allowing this process for residential apartment complexes. Over the years the process for allowing submetering has been explained to various customers (or potential customers) and requested information has been provided on the process. Recently a few customers have inquired about submetering, and when provided with copies of our current ordinance, have pointed out that the ordinance does not clearly define the number of apartment units required to fall within the definition of an “apartment structure,” which is the term currently used in Code § 70-25. In consultation with the City Attorney’s Office, it has been determined that a clearer definition of the term “residential apartment complex” should be included in this Code section. The revisions for Code Section 70-25 are attached, and if adopted, will clearly show that the definition of a residential apartment complex consists of fifteen (15) or more units and importantly, will align the City’s definition with that of the NCUC.

Issues and Analysis

The current Chapter 70, Article I, Section 70-25 does not clearly define an apartment structure. The proposed Code revisions more clearly define what the City considers a residential apartment complex and should lessen the ambiguity when customers or potential customers inquire about sub-metering in the future. In addition, by aligning the City’s definition with that of the NCUC, submetered tenants will be the beneficiaries of the additional safeguards incorporated into the NCUC’s regulations.

Alternatives

1. City Council may elect to adopt an ordinance to modify Chapter 70, Article I, Section 70-25 of the Durham City Code to clarify the definition of a residential apartment complex in the context of allowing the resale of water and/or sewer services purchased from the City.
2. Council may elect to not modify the existing Chapter 70, Article I, Section 70-25 of the Durham City Code. This will maintain the status quo.

Financial Impacts

Modifications to the existing Code would not result in any additional financial impact, as the intent of this revision is to more clearly define the circumstances under which submetering is allowed.

SDBE Summary

N/A